

§ 404.464

Peru (effective February 1969)
Philippines (effective June 1960)
Poland (effective March 1957)
Portugal (effective May 1968)
San Marino (effective January 1965)
Spain (effective May 1966)
St. Christopher and Nevis (effective September 1983)
St. Lucia (effective August 1984)
Sweden (effective July 1966)
Switzerland (effective July 1968)
Trinidad and Tobago (effective July 1975)
Trust Territory of the Pacific Islands (Micronesia) (effective July 1976)
Turkey
United Kingdom
Western Samoa (effective August 1972)
Yugoslavia
Zaire (effective July 1961) (formerly Congo (Kinshasa))

(b) *The “treaty obligation” exception.* It is determined that the Treaties of Friendship, Commerce, and Navigation now in force between the United States and the Federal Republic of Germany, Greece, the Republic of Ireland, Israel, Italy, and Japan, respectively, create treaty obligations precluding the application of § 404.460(a) to citizens of such countries; and that the Treaty of Friendship, Commerce, and Navigation now in force between the United States and the Kingdom of the Netherlands creates treaty obligations precluding the application of § 404.460(a) to citizens of that country with respect to monthly survivors benefits only. There is no treaty obligation that would preclude the application of § 404.460(a) to citizens of any country other than those listed above.

[32 FR 19159, Dec. 20, 1967, as amended at 43 FR 2628, Jan. 18, 1978; 52 FR 8249, Mar. 17, 1987]

§ 404.464 How does deportation or removal from the United States affect the receipt of benefits?

(a) *Old-age or disability insurance benefits.* (1) You cannot receive an old-age or disability benefit for any month that occurs after the month we receive notice from the Secretary of Homeland Security or the Attorney General of the United States that you were:

(i) Deported under the provisions of section 241(a) of the Immigration and Nationality Act (INA) that were in effect before April 1, 1997, unless your deportation was under:

(A) Paragraph (1)(C) of that section; or

(B) Paragraph (1)(E) of that section and we received notice of your deportation under this paragraph before March 3, 2004;

(ii) Removed as deportable under the provisions of section 237(a) of the INA as in effect beginning April 1, 1997, unless your removal was under:

(A) Paragraph (1)(C) of that section; or

(B) Paragraph (1)(E) of that section and we received notice of your removal under this paragraph before March 3, 2004; or

(iii) Removed as inadmissible under the provisions of section 212(a)(6)(A) of the INA as in effect beginning April 1, 1997.

(2) Benefits that cannot be paid to you because of your deportation or removal under paragraph (a)(1) of this section may again be payable for any month subsequent to your deportation or removal that you are lawfully admitted to the United States for permanent residence. You are considered lawfully admitted for permanent residence as of the month you enter the United States with permission to reside here permanently.

(b) *Dependents or survivors benefits.* If an insured person on whose record you are entitled cannot be paid (or could not have been paid while still alive) an old-age or disability benefit for a month(s) because of his or her deportation or removal under paragraph (a)(1) of this section, you cannot be paid a dependent or survivor benefit on the insured person’s record for that month(s) unless:

(1) You are a U.S citizen; or

(2) You were present in the United States for the entire month. (This means you were not absent from the United States for any period during the month, no matter how short.)

(c) *Lump sum death payment.* A lump sum death payment cannot be paid on the record of a person who died:

(1) In or after the month we receive from the Secretary of Homeland Security or the Attorney General of the United States notice of his or her deportation or removal under the provisions of the INA specified in paragraph

(a)(1) of this section (excluding the exceptions under paragraphs (a)(1)(i)(A) and (B) and (ii)(A) and (B) of this section); and

(2) Before the month in which the deceased person was thereafter lawfully admitted to the United States for permanent residence.

[70 FR 16411, Mar. 31, 2005]

§ 404.465 Conviction for subversive activities; effect on monthly benefits and entitlement to hospital insurance benefits.

(a) *Effect of conviction.* Where an individual is convicted of any offense (committed after August 1, 1956) under chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18 U.S.C., or under section 4, 112, or 113 of the Internal Security Act of 1950, as amended, the court, in addition to all other penalties provided by law, may order that, in determining whether any monthly benefit is payable to the individual for the month in which he is convicted or for any month thereafter, and in determining whether the individual is entitled to hospital insurance benefits under part A of title XVIII for any such month, and in determining the amount of the benefit for that month, the following are not to be taken into account:

(1) Any wages paid to such individual, or to any other individual, in the calendar quarter in which such conviction occurred or in any prior calendar quarter, and

(2) Any net earnings from self-employment derived by the individual, or any other individual, during the taxable year in which the conviction occurred or during any prior taxable year.

(b) *Recalculation of benefit.* When notified by the Attorney General that the additional penalty as described in paragraph (a) of this section has been imposed against any individual entitled to benefits under section 202 or section 223 of the Act (see subpart D), the Administration, for the purposes of determining the individual's entitlement to such benefits as of the month in which convicted and the amount of the benefit, will exclude the applicable wages

and net earnings in accordance with the order of the court.

(c) *Effect of pardon.* In the event that an individual, with respect to whom the additional penalty as described in paragraph (a) of this section has been imposed, is granted a pardon of the offense by the President of the United States, such penalty is not applied in determining such individual's entitlement to benefits, and the amount of such benefit, for any month beginning after the date on which the pardon is granted.

§ 404.466 Conviction for subversive activities; effect on enrollment for supplementary medical insurance benefits.

An individual may not enroll under part B (supplementary medical insurance benefits) of title XVIII if he has been convicted of any offense described in § 404.465.

§ 404.467 Nonpayment of benefits; individual entitled to disability insurance benefits or childhood disability benefits based on statutory blindness is engaging in substantial gainful activity.

(a) *Disability insurance benefits.* An individual who has attained age 55 and who meets the definition of disability for disability insurance benefits purposes based on *statutory blindness*, as defined in § 404.1581, may be entitled to disability insurance benefits for months in which he is engaged in certain types of substantial gainful activity. No payment, however, may be made to the individual or to beneficiaries entitled to benefits on his earnings record for any month in which such individual engages in any type of substantial gainful activity.

(b) *Childhood disability benefits.* An individual who has attained age 55 and who meets the definition of disability prescribed in § 404.1583 for childhood disability benefits on the basis of *statutory blindness* may be entitled to childhood disability benefits for months in which he engages in certain types of substantial gainful activity. However, no payment may be made to such individual for any month after